IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

TUESDAY, THE 18TH SEPTEMBER 2007 / 27TH BHADRA 1929

WP(C).No. 23940 of 2007(Y)

PETITIONER:

K.MOHAMED ALI,
PROPRIETOR, MALABAR TRADERS, VIII/925,
SHINE COMPLEX, CHULLIMADA, KANJIKODE, PALAKKAD.

BY ADV. DR.K.B.MUHAMED KUTTY (SR.)
SRI.K.M.FIROZ

RESPONDENTS:
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1. ASSISTANT COMMISSIONER (KVAT),
COMMERCIAL TAXES, SPECIAL CIRCLE, PALAKKAD.

2. DEPUTY COMMISSIONER,
COMMERCIAL TAXES, PALAKKAD.

BY ADV. SHRI.SREEKRISHNA, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18/09/2007, ALONG WITH WPC NOS. 23941 & 25841 OF 2007 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) No. 23940/2007

APPENDIX

PETITIONER'S EXHIBITS

P1 : COPY OF THE PETITIONER'S REGISTRATION CERTIFICATE UNDER THE KVAT ACT DATED 30/09/2007.

P2 : COPY OF PETITIONER'S REGISTRATION CERTIFICATE UNDER THE CST ACT DATED 04/10/2006.

P3 : COPIES OF THE RETURNS FOR THE YEAR 2007-08 DATED 10/06/2007 AND 10/07/2007.

P4 : COPIES OF DEMAND DRAFTS TOWARDS TAX PAYMENT IN ADVANCE.

P5 : COPIES OF RELEVANT EXTRACTS OF THE DELIVERY NOTES REGISTER MAINTAINED BY THE PETITIONER.

P6 : COPY OF PETITIONER'S APPLICATION BEFORE THE FIRST RESPONDENT DATED 01/08/2007 REQUESTING 10 DELIVERY NOTE BOOKS.

P7 : COPY OF REPRESENTATION DATED 02/08/2007 SUBMITTED BEFORE THE SECOND RESPONDENT.

// TRUE COPY //

PA TO JUDGE.

jg

C.N.RAMACHANDRAN NAIR, J.

WP(C) Nos. 23940, 23941 & 25841 of 2007

Dated, this the 18th day of September, 2007

J U D G M E N T

These writ petitions are filed for direction to the Assessing Officer to issue sufficient number of delivery note books to the petitioners. During pendency of these writ petitions, this Court directed the Assessing Officer to issue certain number of delivery note books with direction to the respondents to monitor the utilization of the delivery note books issued. Petitioners have stated that each one of them paid huge amount of tax, ranging from Rs. 47 lakhs to above Rs. 1 crore within a short period. The item purchased and sold by the petitioners is live chicken, entry of which is allowed inside the State on payment of advance tax at the checkpost. Learned counsel for the petitioners submitted that the Commissioner has fixed value of the chicken periodically and tax is paid at the checkpost based on valuation by the Department. Learned Government Pleader, on the other hand, submitted that after filing of these writ petitions, notices have been issued to petitioners proposing cancellation of registrations granted to them under the KVAT Act in exercise of powers conferred under Section

16(9) of the KVAT Act. The allegation is that petitioners are mainly trading in delivery notes at the checkpost and they are neither maintaining accounts nor actually carrying on business. Of course, it is for the petitioners to produce accounts and copies of delivery note books to establish compliance of statutory provisions. However, until final decision is taken on the proposal to cancel registration, there will be direction to the Assessing Officer to issue sufficient number of delivery note books to the petitioners. As and when application is made, the utilization of the books earlier issued should be verified and if issued delivery note books are accounted and tax paid, fresh books should be issued to the petitioners without delay. I make it clear that while considering proposal for cancellation, the Assessing Officer should consider the nature of business and the inherent problem faced by the petitioners in maintaining stock of live birds. In other words, cancellation of registrations should not lead to more adverse consequences for the Revenue.

These writ petitions are disposed of as above.

(C.N.RAMACHANDRAN NAIR, JUDGE.)

jg